

## **RESPONSE**

### **I. Restriction Requirement**

The Examiner has determined that the original claims are directed to four separate and distinct inventions under 35 U.S.C. § 121, as follows:

- Group I: Claims 1-3, allegedly drawn to a nucleic acid that contains SEQ ID NO: 1 or encodes SEQ ID NO: 2, classified in class 536, subclass 23.1.
- Group II: Claim 4, allegedly drawn to a nucleic acid that encodes SEQ ID NO: 4, classified in class 536, subclass 23.1.
- Group III: Claim 5, allegedly drawn to a nucleic acid that encodes SEQ ID NO:6, classified in class 536, subclass 23.1.
- Group IV: Claim 6, allegedly drawn to a nucleic acid that encodes SEQ ID NO:10, classified in class 536, subclass 23.1.

### **II. Response to Restriction Requirement**

In response to the Restriction Requirement mailed on August 24, 2004, Applicants elect with without traverse to prosecute the claims of Group IV (Claim 6, allegedly drawn to a nucleic acid that encodes SEQ ID NO:10, classified in class 536, subclass 23.1). Applicants further elect, pursuant to 35 U.S.C. § 121, the species of SEQ ID NO: 9 (and the amino acid sequence it encodes, SEQ ID NO: 10 for initial examination on the merits. Elected Claim 6, and new claims 7-11 read on the elected species. Applicants understand their species election is being made solely to expedite examination of the application, and that they are entitled to consideration of additional species upon allowance of a generic claim. Applicants reserve the right to refile claims to the non-elected inventions in one or more future applications retaining the priority date of the present case and the earlier cited priority applications.

### **III. Status of the Claims**

Claim 1-5 have been cancelled entirely without prejudice and without disclaimer, as being drawn to a non-elected invention. New claims 7-11 have been added to better claim the present invention. Therefore, claims 6-11 are presently pending in the case.

### **IV. Support for the Claims**

New Claim 7 has been added to more clearly claim aspects of the invention. Claim 7 finds support throughout the specification and sequence listing as originally filed, with particular support being found in original Claim 6 on which it depends and on SEQ ID NO:9.

New Claims 8 and 9 have been added to more clearly claim aspects of the invention. Claims 8 and 9 find support throughout the specification and sequence listing as originally filed, with particular support being found on or about page 15, line 3-10 of the specification.

New Claims 10 and 11 have been added to more clearly claim aspects of the invention. Claims 10 and 11 find support throughout the specification and sequence listing as originally filed, with particular support being found on or about page 15, lines 10-28 of the specification.

As new claims 7-11 are fully supported by the specification, sequence listing and claims as originally filed, they do not constitute new matter. Entry is therefore respectfully requested.

### **V. Amendment and Request to Correct Inventorship**

As claims have been cancelled in response to the Restriction Requirement, inventorship must be amended in compliance with 37 C.F.R. § 1.48(b). Applicant respectfully requests amendment of inventorship under 37 C.F.R. § 1.48(b) and 148(b)1 in order to remove the inventors of the non-elected claims since their invention is no longer being claimed in the present application as amended. The inventors *that are requested to be removed* as a result of the cancellation of the non-elected claims in this response to restriction requirement are Xuanchuan (Sean) Yu, Maricar Miranda and Brian Mathur. The inventors of the remaining claims are therefore, C. Alexander Turner, Jr., Carl Johan Friddle and Brenda Gerhardt,

The PTO is authorized to charge the fee required under 37 C.F.R. § 1.17(i) for this Amendment and Request to Correct Inventorship in a non-provisional application under 37 C.F.R. § 1.48(b) to Deposit Account No. 50-0892. Although Applicants believe that no additional fees are due

in connection with this response, the Commissioner is authorized to charge any underpayment or credit any overpayment required with this response to Deposit Account No. 50-0892.

## **VI. Conclusion**

The present document is a complete response to the Restriction and Species Election Requirement. Applicants believe that the claims of the instant application meet all of the conditions for patentability and are in condition for allowance. Accordingly, an early indication of the same is respectfully requested. Should Examiner Szperka have any questions or comments, or believe that certain amendments of the claims might serve to improve their clarity, a telephone call to the undersigned Applicants' representative is earnestly solicited.

Although Applicants believe that no additional fees are due in connection with this response, the Commissioner is authorized to charge any underpayment or credit any overpayment required with this response to Deposit Account No. 50-0892.

Respectfully submitted,

October 25, 2004  
Date



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